

Sir Basil Firebrace K^{nt.} and Bart. Appellant.

Arthur Moore Esq; Respondent.

The Appellants C A S E.

THE *Old East-India Company* commenc'd a Suit in *Chancery* against Sir *Thomas Cook*, thereby demanding an Account of him of above 100000 *l.* in Stock and Money, to which Suit they made the Appellant Sir *Basil Firebrace* a party, and thereby charg'd him with a very considerable Sum of Money, although the Money demanded of him, was Paid by the Company to other Persons, and Sir *Basil Firebrace* no ways accountable for the same

That the said Suite depended several years, and (tho' Groundless) was Vexatious and Chargeable to Sir *Basil Firebrace*, and the Occasion of great Divisions amongst the Adventurers, and generally apprehended to be the cheif Cause of keeping the Stock at a low Price, and therefore several of the Adventurers did often propose, that the said Suite might be accomodated in an amicable Way, and at last a General Court was Summoned to meet, and being met, after other matters took the said Suite, also under consideration, and upon full debate thereupon.

Made an Order that the said matters in difference should be referred to several of the Adventurers, of which Mr. *Moore* was one, and had at that time a very great Influence and Interest amongst the other Referrees.

That before the General Court met, Mr. *Moore* desired Sir *Basil Firebrace* to let him have the several Orders of Court, and Warrants of the said Company for Issuing out the Money by the said Suit, charged upon him the said Sir *Basil*, and whereby it did appear, that he was no ways Accountable for the same, and Sir *Basil Firebrace* depending upon Mr. *Moore's* Justice, did let him have the said Orders and Warrants, and other Papers relating to his Defence against the said Demand, the better to enable him to open the state of the Case fairly to the General Court, and Court of Committees, whereof he was one.

Mr. *Moore* Declared in the General Court, and otherwise, That the said Demand, as to Sir *Basil Firebrace*, was Groundless and ought to be Releas'd.

Some few day after Mr. *Moore* became a Referree, he sent *James Craggs Esq;* to propose to Sir *Basil* to let him have 6000 *l.* Stock in the said Company, at the then Market price, with Liberty to pay for it at any time within a Year, without Interest, which Proposal Sir *Basil* at first refused, as being unreasonable for Mr. *Moore* to expect such an advantage from him. But having just cause to suspect that by Mr. *Moore's* contrivance, the meeting of the Referrees was from time to time put off, and that thereby the Suite might be prolonged to his further Charge and Vexation, Sir *Basil* was at last prevailed on by Mr. *Craggs* to Sign a Contract by him brought ready drawn in his own Name, but in trust for Mr. *Moore*, as was alledged and is to the effect following, viz.

After a recital that the Appellant at the request of *Craggs* had advanced 2520 *l.* and thereby Purchased 6000 *l.* Stock, that it is agreed that the 6000 *l.* Stock should continue in Sir *Basil's* Name till *Craggs* should pay 2520 *l.* (which was at the rate of 42 *l.* per Cent, at which Price Stock was then Sold for ready Money) which *Craggs* Covenants to do, on or before the 19th of July 1700. and in default thereof that Sir *Basil* might sell the Stock, and that if it fell short *Craggs* would make it up, and if Sold for more, Sir *Basil* to pay the Overplus to *Craggs*, with a Covenant from Sir *Basil Firebrace*, that in case *Craggs* paid the 2520 *l.* at any time before the 19 of July 1700. Sir *Basil* should then Transferr the Stock, which Contract was Sign'd and deliver'd to Mr. *Craggs* upon this expresse Condition.

That in case the Company did not within a Month dismiss their Bill, and execute a General Release to Sir *Basil*, then the Contract was to be void and re-deliver'd to Sir *Basil*, of which Condition Mr. *Craggs* acquainted Mr. *Moore* and he consented thereto.

That the Company not dismissing their Bill, or executing a Release within a month, *Craggs* came again to Sir *Basil* to have the time enlarged, which was agreed to only for a Fortnight by Sir *Basil*, but not being complied with in that time was void.

That besides the Condition of the Contracts, being void as aforesaid, there is no consideration, or any Agreement, for any Allowance in lieu of the Interest for the non Payment of the Money for a Year. Nor any Recompence for the advantage Mr. *Moore* had in being at Liberty to call for the Stock at any time within the Year, though such benefit is worth above 10 *l.* per Cent.

CRAGGS, by Indorment upon the Contract, Assigns the benefit thereof unto the Respondent Mr. *Moore*, without obliging him to the Payment of the 2520 *l.* or any part thereof, and by contrivance and surprize, got Sir *Basil* to be a Witness to the Assignment.

THE Respondent brought his Bill in *Chancery* to have a performance of this Contract in Speice.

THE Cause came to be heard before the present Lord Keeper, and his Lordship Decree'd the Appellant to Transferr to the Respondent 6000 *l.* Stock, and to allow the Respondent a Dividend of ten per Cent, made upon the *East India* Stock since the Contract, amounting to 600 *l.*, and that the Respondent should pay the Appellant the residue of the Purchase Money (deducting thereout the 600 *l.* Dividend) with Interest from the 19th of July 1700. which by the Order is computed at 2101 *l.* 9s. 6d. and the Appellant to pay the Respondent his Costs of the Suits, to be Taxt by a Master, by which Decree if it should prevaile, the Respondent without being out one Farthing of Money will get 3000 *l.*

From this Order Sir *BASIL FIREBRACE* hath Appeal'd to the Lords in Parliament.

FOR that the Contract thereby confirm'd, is in the nature only of a Stock jobbing Bargain, and against the Intent of the Act of Parliament made to prevent such Practices, and would have been within the Letter thereof, were it not for the Recital in the Contract (that *Firebrace* at the request of *Craggs* had advanced 2520 *l.* in the purchase of Stock, which is intirely fictitious, no such thing being done, and by this means the Act against Stock-jobbing (which is recited to be a mischeiveous practice) may be intirely eluded.

For that the Contract being obtained by contrivance, and circumvention, without any consideration, paid by Mr. *Moore*, and whilst he was a Referree and able to do Sir *Basil* a great prejudice, unless he complied with his unfair and unreasonable demand, it ought not to be so far Countenanced in a Court of Equity, as to have a performance Decreed in Speice, and Especially for that Mr. *Moore* may in Mr. *Craggs* Name Sue at Law and recover Damages, if it be a fair and reasonable Agreement, and if not, it ought not to be Establish'd, by a Court of Conscience.

For which reasons the Appellant Humbly hopes the said Decree shall be reverst.

Jo. Hawles.

J. Jekyll.